

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CG Docket No. 02-278
Petition for Waiver of)	
Papa Murphy's Holdings, Inc. and)	
Papa Murphy's International LLC)	
_____)	

**SUPPLEMENT TO RESPONSE TO PETITION FOR RECONSIDERATION
OF RETROACTIVE WAIVER TO PAPA MURPHY'S HOLDINGS, INC.
AND PAPA MURPHY'S INTERNATIONAL L.L.C.**

Papa Murphy's Holdings, Inc. and Papa Murphy's International L.L.C. (collectively, "Papa Murphy's"), through their undersigned counsel, respectfully submit this supplement to their November 25, 2016 response to John Lennartson and Susan Shay Nohr's (collectively, "Petitioners") Petition for Reconsideration of Retroactive Waiver to Papa Murphy's Holdings, Inc. and Papa Murphy's International L.L.C. (the "Petition").¹

Petitioners have submitted objectively false evidence to the Commission, and Petitioners compounded their error by making demonstrably false statements based on that manipulated evidence. Papa Murphy's submits this supplement to correct the record, which is easily done by simply looking at the complete, not-truncated copies of the at-issue screenshots.

On November 14, 2016, Petitioners filed their Petition seeking reconsideration of the Commission's Order granting waivers to several entities, including Papa Murphy's, of the Commission's prior express written consent rules. Key to Petitioners' argument was their assertion that Papa Murphy's supposedly made no changes to its opt-in disclosures following the October 16, 2013 rule change, which Petitioners argued demonstrated ignorance, rather than confusion, regarding the new rules.² To support this assertion, Petitioners submitted a declaration attaching several screenshots from an internet archiving website purportedly showing no additional disclosures on Papa Murphy's website.³

In response, Papa Murphy's highlighted Petitioners' failure to offer screenshots that captured *all content* on Papa Murphy's website and submitted the sworn declaration of Cynthia Hofmann, establishing that on or about October 16, 2013, Papa Murphy's revised the text message consent disclosures on its website, which revisions included adding a disclosure that consent was not necessary to purchase goods or services. Undeterred, Petitioners have now

¹ Papa Murphy's has concurrently filed a separate brief seeking leave to file this supplement pursuant to 47 C.F.R. § 1.106(f).

² Petition at 13.

³ Petition, Ex. 6.

submitted screenshots which they argue establish that Papa Murphy's made no changes to its website after October 2013.⁴

In providing hard-copy screenshots as the core of their Supplement, Petitioners either were grossly reckless or they intentionally fabricated evidence. The latest hard-copy screenshots, which are higher-quality versions of the two sets of screenshots Petitioners previously submitted, plainly omit the bottom half of the Papa Murphy's text message sign-up form from 2014.⁵ Navigating to the URL that appears at the bottom of each of the Petitioners-submitted sets of screenshots (one from January 31, 2014 and one from March 30, 2014) shows that the content which proves that Papa Murphy's revised its disclosures post October 16, 2013 was cut off, by Petitioners, from the hard-copy screenshots they have presented to the Commission. Specifically, the bottom half of the text message sign-up form, which is cut off in the hard-copy versions Petitioners' submitted, includes the additional disclosure: "Consent to receive a text message is not a condition of purchasing a good or service."^{6,7} Petitioners compound their error in omitting the relevant content by making the objectively and patently false statement that "nowhere on these webpages is there ... a disclosure that consent is not a condition of purchase."⁸

Petitioners have submitted doctored evidence, and they have made false statements based on that evidence. Worse, Petitioners' outrageous behavior is *in response* to Papa Murphy's having explained in its November 25, 2016 response to the Petition, that "the internet archiving site on which [Petitioners] relied does not archive all text on the webpage, and that there are

⁴ Supplement at 2.

⁵ See Declaration of Anthony Todaro in Support of Supplement to Response to Petition for Reconsideration of Retroactive Waiver to Papa Murphy's Holdings, Inc. and Papa Murphy's International L.L.C. ("Todaro Decl."), Ex. 1.

⁶ Todaro Decl., Exs. 2, 3.

⁷ This is in accordance with Ms. Hofmann's declaration, which states that on or about October 16, 2013, Papa Murphy's revised the text message consent disclosures on its website, which included adding a disclosure that consent was not necessary to receive the offered deals.

⁸ John Lennartson and Susan Shay Nohr's Supplement to Petition for Reconsideration of Retroactive Waiver to Papa Murphy's Holdings, Inc. and Retroactive Waiver to Papa Murphy's International L.L.C. at 2.

significant blank spaces on the pages they reference. In reality, Papa Murphy's did make changes to the disclosures on its website on or about October 16, 2013, including adding the disclosures that consent to receiving text messages was not required to obtain the advertised offers."⁹ Caught in a material fabrication to the Commission, Petitioners have doubled-down on their fabrication. The complete hard-copy versions of the at-issue screenshots, submitted with this pleading¹⁰ easily reveal Petitioners' bold factual misrepresentations to the Commission.

Although a detailed factual finding is not necessary to affirm the grant of the at-issue waiver,¹¹ the unaltered factual evidence demonstrates that Papa Murphy's was aware of the Commission's 2012 Order and made changes accordingly. Petitioners' principal argument that Papa Murphy's was simply ignorant of the 2012 Order and thus could not have been confused by the Order is wholly undercut by the complete screenshots and Ms. Hofmann's declaration. For this reason, as well as all those set forth in its opposition brief, Papa Murphy's respectfully requests the Commission deny the instant Petition.

Respectfully submitted this 21st day of December, 2016.

s/ Anthony Todaro

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⁹ Response to Petition for Reconsideration of Retroactive Waiver to Papa Murphy's Holdings, Inc. and Papa Murphy's International L.L.C. at 10.

¹⁰ Todaro Decl., Exs. 2, 3.

¹¹ The reasons why no detailed factual finding is necessary to affirm the waiver are set out in Papa Murphy's opposition to Petitioners' Petition.